

**BEFORE THE BOARD OF DISCIPLINARY APPEALS  
APPOINTED BY  
THE SUPREME COURT OF TEXAS**

**IN THE MATTER OF §  
R. LEONADIS MCKINNEY §  
STATE BAR CARD NO. 13723400 §**

**CAUSE NO. 48984**

**PETITION FOR COMPULSORY DISCIPLINE**

**TO THE BOARD OF DISCIPLINARY APPEALS:**

Petitioner, the Commission for Lawyer Discipline, brings this action against Respondent, R. Leonadis McKinney, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part VIII of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of this Board's procedures for handling a compulsory discipline matter by attaching a copy of such procedures to this petition.

2. Respondent, R. Leonadis McKinney, may be served with a true and correct copy of this Petition for Compulsory Discipline, its attachments, as well as a notice of hearing, at Robert L. McKinney, #56786-060, Houston FDC, 1200 Texas Avenue, Houston, Texas 77002.

3. On or about February 7, 2011, Robert L. ("Pete") McKinney was charged by Information (Exhibit 1) with Count 1 - Conspiracy to Commit Bribery in Federally Funded Programs in Case No. 1:11CR059, styled *United States of America v. Robert L. ("Pete") McKinney*, in the United States District Court for the Northern District of Ohio, Eastern Division.

4. On or about February 23, 2011, a Plea Agreement (Exhibit 2) was entered in Case No. 1:11CR059, styled *United States of America v. Robert L. ("Pete") McKinney*, in the United States

District Court for the Northern District of Ohio, Eastern Division, wherein Respondent pled guilty to Count 1 of the Information - Conspiracy to Commit Bribery in Federally Funded Programs.

5. On or about May 12, 2011, a Judgment in a Criminal Case (Exhibit 3) was entered in Case No. 1:11CR00059-001, styled *United States of America v. Robert L. McKinney*, in the United States District Court for the Northern District of Ohio, Eastern Division, wherein McKinney pled guilty to Count 1 of the Information – Conspiracy to Commit Bribery in Federally Funded Programs in violation of 18 USC §§ 371 & 666. McKinney was committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of four (4) months and ordered upon release from imprisonment to be on supervised release for three (3) years, ordered to pay an assessment of \$100.00 and a fine of \$250,000.00. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, are true and correct certified copies of the following documents in the McKinney criminal case: Information (Exhibit 1) and Plea Agreement (Exhibit 2) and Judgment in a Criminal Case (Exhibit 3). Petitioner expects to introduce certified copies of Exhibits 1 through 3 at the time of hearing of this cause.

6. Respondent, R. Leonadis McKinney, whose bar card number is 13723400, is the same person as the Robert L. McKinney who is the subject of the Information, Plea Agreement and Judgment described above, true and correct certified copies of which are attached hereto as Exhibits 1 through 3.

7. Attached hereto as Exhibit 4 and made a part hereof for all intents and purposes as if the same were copied verbatim herein is a true and correct copy of an affidavit of Alex Veltman, Attorney of Record for Petitioner herein, attesting to the fact that Respondent is the same person as the person who is the subject of the Information, Plea Agreement and Judgment in a Criminal Case entered in the McKinney criminal case described above. Petitioner expects to introduce the original

of said affidavit at the time of hearing of this cause.

8. The offense for which Respondent was convicted is an intentional crime as defined by Rule 1.06(T), Texas Rules of Disciplinary Procedure. It is as well a serious crime as defined by Rule 1.06(Z), Texas Rules of Disciplinary Procedure.

9. Having pled guilty to an intentional crime, and such judgment being final, Respondent should be disbarred as provided in Rule 8.05, Texas Rules of Disciplinary Procedure.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Respondent be given notice of these proceedings as provided by law and, upon hearing of this matter, that the Board enter its order disbarring Respondent and for such other and further relief to which Petitioner may be entitled to receive including costs of court and attorney's fees.

Respectfully submitted,

**Linda A. Acevedo**  
Chief Disciplinary Counsel

**Alex Veltman**  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
STATE BAR OF TEXAS  
P.O. Box 12487, Capitol Station  
Austin, Texas 78711-2487  
Telephone: 512.427.1350  
Facsimile: 512.427.4167



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Alex Veltman  
State Bar Card No. 00795698

ATTORNEYS FOR PETITIONER

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a trial on the merits of the Petition for Compulsory Discipline heretofore sent to be filed with the Board of Disciplinary Appeals on this day, will be held in the courtroom of the Supreme Court of Texas, Tom C. Clark Building, 14th and Colorado Streets, Austin, Texas, at **9:00 a.m. on the 27th day of September 2011.**



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Alex Veltman

**SUPREME COURT OF TEXAS  
BOARD OF DISCIPLINARY APPEALS  
INTERNAL PROCEDURAL RULES**

**SECTION 1: GENERAL PROVISIONS**

**Rule 1.01 Definitions**

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chairperson.
- (c) “Classification” is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE (“TRDP”) 2.10 by the Chief Disciplinary Counsel (“CDC”) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “Clerk” is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “Executive Director” is the executive director of BODA.
- (f) “Panel” is any three-member grouping of BODA.
- (g) “Party” is a complainant, respondent, or the CDC.

**Rule 1.02 General Powers**

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

**Rule 1.03 Additional Rules in Disciplinary Matters**

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE (“TRCP”), TEXAS RULES OF APPELLATE PROCEDURE (“TRAP”), and TEXAS RULES OF EVIDENCE (“TRE”) apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

### **Rule 1.04 Appointment of Panels**

(a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

### **Rule 1.05 Record Retention**

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

### **Rule 1.06 Trial Briefs**

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

### **Rule 1.07 Service**

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is reasonably calculated under all the circumstances to apprise the respondent of the proceeding and to give him or her reasonable time to appear and answer. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

### **Rule 1.08 Publication**

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

### **Rule 1.09 Photocopying Costs**

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

### **Rule 1.10 Abstracts**

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

### **Rule 1.11 Hearing Setting and Notice**

(a) **Original Petitions.** For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice.** The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices.** BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket.** Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

### **Rule 1.12 Time to Answer**

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

### **Rule 1.13 Facsimile and Electronic Filing**

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.

(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

### **Rule 1.14 Hearing Exhibits**

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

### **Rule 1.15 BODA Work Product and Drafts**

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.



## **SECTION 2: ETHICAL CONSIDERATIONS**

### **Rule 2.01 Representing or Counseling Parties in Disciplinary Matters And Legal Malpractice Cases**

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

### **Rule 2.02 Confidentiality**

(a) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

### **Rule 2.03 Disqualification and Recusal of BODA Members**

(a) BODA members are subject to disqualification and recusal respectively as provided in TRCP 18b.

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

## **Rule 2.04 Communications with BODA**

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

## **SECTION 3: CLASSIFICATION APPEALS**

### **Rule 3.01 Notice of Appeal**

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

### **Rule 3.02 Complaint on Appeal**

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

### **Rule 3.03 Notice of Disposition**

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

## **SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS**

### **Rule 4.01 Signing, Filing, and Service**

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

#### **Rule 4.02 Computation of Time**

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

#### **Rule 4.03 Record on Appeal**

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and reporter's record to be included in the record on appeal by written stipulation filed with the custodian of records of the evidentiary panel.

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

- (1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.
- (2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA. If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.

- (3) The clerk's record should be in the following form:
- (i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;
  - (ii) arranged in ascending chronological order by document by date of filing or occurrence;
  - (iii) tabbed with heavy index tabs to show the beginning of each document;
  - (iv) consecutively numbered in the bottom right-hand corner of the pages;
  - (v) bound together so that the record will lie flat when opened; and
  - (vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

(e) **Reporter's Record.** The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the reporter's record, designating the portion of the evidence and other proceedings to be included. A copy of such request shall be filed with the evidentiary panel and BODA and be served on the appellee. The reporter's record shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests.** At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

#### **Rule 4.04 Time to File Record**

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to apply presumptions against the appellant.

(b) **If No Record Filed.**

- (1) If the clerk's record or reporter's record has not been timely filed, the BODA clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and the evidentiary panel.
- (2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:
  - (i) the appellant failed to request a reporter's record; or
  - (ii)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and
  - (b) the appellant is not entitled to proceed without payment of costs.

(c) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record BODA may, upon written motion of a party or upon its own motion, direct a supplemental record to be certified and transmitted by the CDC or the official court reporter.

#### **Rule 4.05 Copies of the Record**

The record shall not be withdrawn from the custody of the BODA clerk. Any party may obtain a copy of the record or any designated part thereof by making written request to the clerk and paying copying charges.

## Rule 4.06 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are cited. The subject matter of each point or group of points shall be indicated in the table of contents;
- (3) a brief general statement of the nature of the cause or offense and the result;
- (4) a statement of the points upon which an appeal is predicated or the issues presented for review;
- (5) a brief of the argument;
- (6) prayer for relief; and,
- (7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation.** Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure to File a Brief.** If the appellant fails to timely file a brief, BODA may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief; or

- (2) decline to dismiss the appeal and give further direction to the case as it considers proper.

#### **Rule 4.07 Oral Argument**

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.

#### **Rule 4.08 Motions Generally**

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. BODA may determine a motion before a response is filed.

#### **Rule 4.09 Motions for Extension of Time**

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

- (1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (2) if the appeal has been perfected, the date when the appeal was perfected;
- (3) the original deadline for filing the item in question;
- (4) the length of time requested for the extension;
- (5) the number of extensions of time which have been granted previously regarding the item in question; and,

- (6) the facts relied upon to reasonably explain the need for an extension.

(c) **For Filing Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

#### **Rule 4.10 Decision and Judgment**

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

- (1) the panel that entered the finding(s); or,
- (2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

*Note: Rule 4.10(a)(2) applies only to matters filed on or after January 1, 2004.*

(b) **Opinions.** BODA may render judgment with or without written opinion.

(c) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(d) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

#### **Rule 4.11 Involuntary Dismissal**

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.



## **SECTION 5: PETITIONS TO REVOKE PROBATION**

### **Rule 5.01 Initiation and Service**

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

### **Rule 5.02 Hearing**

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.

## **SECTION 6: COMPULSORY DISCIPLINE MATTERS**

### **Rule 6.01 Initiation of Proceeding**

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

### **Rule 6.02 Notice of Decision**

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

## **SECTION 7: RECIPROCAL DISCIPLINE MATTERS**

### **Rule 7.01 Initiation of Proceeding**

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall request that the respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction

including a copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

### **Rule 7.02 Order to Show Cause**

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

### **Rule 7.03 Attorney's Response**

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer but thereafter appears at the hearing, BODA may, at the discretion of the chair, receive testimony from the respondent relating to the merits of the petition for reciprocal discipline.

## **SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS**

### **Rule 8.01 Appointment of District Disability Committee**

(a) If the evidentiary panel of the grievance committee finds pursuant to TRDP 2.17P(2) or the CDC believes pursuant to TRDP 2.14C that a respondent is suffering from a disability, the rules in this section shall apply to the District Disability Committee *de novo* proceeding held pursuant to TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee shall be filed with the BODA clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA chair may appoint a substitute member.

## **Rule 8.02 Hearing Order**

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

## **Rule 8.03 Provisions for Physical or Mental Examinations**

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

### **Rule 8.04 Ability to Compel Attendance**

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued as provided in TRCP 176.

### **Rule 8.05 Respondent's Right to Counsel**

(a) The notice to the respondent that a District Disability Committee has been appointed and the notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

### **Rule 8.06 Limited Discovery**

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

### **Rule 8.07 Hearing**

(a) The party seeking to establish the disability must prove by a preponderance of the evidence that the respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

### **Rule 8.08 Notice of Decision**

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

### **Rule 8.09 Confidentiality**

All proceedings before the District Disability Committee are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court.

## **SECTION 9: DISABILITY REINSTATEMENTS**

### **Rule 9.01 Petition for Reinstatement**

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition shall affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may seal all or any part of the record of the proceeding.

### **Rule 9.02 Discovery**

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

### **Rule 9.03 Physical or Mental Examinations**

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall be given reasonable notice of the examination by written order specifying the name, address and telephone number of the person conducting the examination.

(c) The examining professional shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

### **Rule 9.04 Judgment**

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

## **SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT**

### **Rule 10.01 Docketing by the Clerk**

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations

of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

### **Rule 10.02 Appellate Rules to Apply**

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
2011 FEB -7 AM 10:34  
GERI M. SMITH  
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT L. ("PETE") MCKINNEY,

Defendant.

INFORMATION

CASE NO.

Title 18, Section 371, United States Code

1:11 CR059  
JUDGE GWIN

The United States Attorney charges:

General Allegations

At all times material to this matter:

I hereby certify that this instrument, document no. 1, filed on 02/07/11, is a true and correct copy of the electronically filed original.

Attest: Geri M. Smith, Clerk  
U.S. District Court  
Northern District of Ohio

By: [Signature]  
Deputy Clerk

Relevant Persons and Entities

1. The Brotherhood of Locomotive Engineers and Trainmen ("BLET") was a national labor organization with over 55,000 members, consisting of railroad employees throughout the United States, headquartered in Cleveland, Ohio. According to its mission statement, the BLET "exists to promote and protect the rights, interests, and safety of its members through solidarity, aggressive representation, and education." The BLET was a division of the Rail Conference of the International Brotherhood of Teamsters ("IBT"). The IBT and the BLET merged on or about January 1, 2004, with the BLET becoming a division of the IBT. During the one-year periods of calendar years 2006, 2007, 2008, and 2009, the IBT received benefits in excess of \$10,000 under federal programs involving grants, contracts, subsidies, loans, guarantees, insurance, and other forms of federal assistance.

Exhibit  
1



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2. Edward W. Rodzwick was the National President of the BLET. He assumed the duties of National President on or about March 20, 2008. He also held the title of President of the Teamsters Rail Conference. Prior to that time, Rodzwick served as First Vice President of BLET. Rodzwick resided in Avon, Ohio.

3. BLET Official No. 1 was a Special Representative at the BLET from 1999 through July 30, 2006, and from May 1, 2008 to present. As Special Representative, BLET Official No. 1 was assigned to recruit non-union railroad workers for membership in BLET. BLET Official No. 1 reported directly to Rodzwick.

4. In executing their duties as President and Special Representative of the BLET, which is a division of the IBT, Rodzwick and BLET Official No. 1 were "agent"(s) of the IBT, within the meaning of 18 U.S.C. § 666(a)(1) and (d)(1).

#### Duties of Fidelity

5. The IBT and the BLET qualified as a "labor organizations" under Section 402(i), Title 29, United States Code, which is part of the Labor Management Reporting and Disclosure Act ("LMRDA"), and they are subject to the various provisions of the LMRDA governing "labor organizations."

6. Pursuant to part of the LMRDA, Title 29, United States Code, Section 501(a), "[t]he officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group." As officers, agents, and representatives of the IBT and its division, the BLET, Edward W. Rodzwick and BLET Official No. 1 were subject to Section 501(a) of the LMRDA. In this capacity, Edward W. Rodzwick and BLET Official No. 1 occupied positions of trust in relation to the IBT, the BLET,

-3-

and their railway members as a group. They were subject to duties of fidelity pursuant to Section 501(a), including (1) the duty to refrain from dealing with the IBT and the BLET as an adverse party or on behalf of an adverse party in any matter connected with their duties; (2) the duty to refrain from holding or acquiring any pecuniary or personal interest which conflicts with the interests of the IBT and the BLET; and (3) the duty to account to the IBT and the BLET for any profit received by them in whatever capacity in connection with transactions conducted by Edward W. Rodzwick and BLET Official No. 1 or under their direction on behalf of the IBT and the BLET.

7. In their capacity as officers, agents, and representatives of the IBT and BLET, Edward W. Rodzwick and BLET Official No. 1 were also subject to duties of fidelity set forth in official labor organization documents. Among other things, the Code of Compliance for Officers and Employees of the Brotherhood of Locomotive Engineers and Trainmen Concerning Employers and Designated Legal Counsel ("DLC") provided that "[a]n officer or employee [of the BLET] may not solicit or accept gifts, payments, monies, loans, promises or agreements . . . or anything of value including reimbursed expenses given because of his or her position in the organization, from any employer or DLC . . . [w]ho has interests that may be substantially affected by the performance of an officer's or employee's official duties." The IBT Code of Conduct, which governed the performance of official duties by Edward W. Rodzwick and BLET Official No. 1, stated: "International Union policy prohibits officers, employees and representatives from accepting any gift or thing of value from any employer, employer representative, service provider, vendor or potential vendor in violation of applicable law or in circumstances that would create a conflict of interest or the appearance of undue influence."

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The DLC Program of the BLET

8. In 1908, Congress enacted the Federal Employers Liability Act ("FELA") (45 U.S.C. § 51-60). FELA granted jurisdiction for claims of recovery for railroad injuries to the federal courts, provided for recovery of damages by railroad employees and their survivors against common carriers, and abolished restrictions on the types and amounts of damages that may be recovered by employees covered by FELA.

9. The BLET's members who are employed by common carriers by railroad are covered by FELA. Attorneys handling FELA matters are generally more effective if they have both experience with federal law relating to FELA, and familiarity with the railroad business. In order to facilitate the retention of qualified and experienced FELA attorneys by its injured members, the BLET maintains a list of designated attorneys who are held out to its members as competent and professional FELA attorneys. The members of this list are referred to as DLC attorneys.

10. Designation on the DLC list provided a FELA attorney with valuable access to BLET members as potential clients, and to local BLET officials as sources of information and referrals concerning accidents and workers. The BLET affirmatively recommended the DLC attorneys to its members for FELA-related and other business. Though there is no prohibition on representation of union members by non-designated attorneys, designation through the DLC program was typically highly lucrative for a designated attorney.

11. The BLET published Rules of Conduct for DLC attorneys. The BLET represented to its members that the DLC attorneys were bound to follow these Rules of Conduct.

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12. The National President of the BLET had authority over the designation status of DLC attorneys. Rodzwick was National President of the BLET and had authority over the designation status of DLC attorneys.

13. In exercising his authority over DLC designations for the BLET's DLC program, Rodzwick was an agent of the IBT and its division, the BLET, conducting business and transactions of those organizations.

14. In exercising authority over DLC designations for the BLET's DLC program, Rodzwick was subject to duties of fidelity to the BLET and to IBT, as further specified above.

15. Defendant ROBERT L. ("PETE") McKINNEY was a plaintiff's personal injury attorney, specializing in representing injured railroad workers. McKINNEY practiced at the law firm of McKinney & McKinney, LLP, located in Houston, Texas. The BLET cases from the DLC program had a value of over \$5,000 annually.

COUNT 1

(Conspiracy to Commit Bribery in Federally Funded Programs)

The United States Attorney further charges:

16. The General Allegations contained in paragraphs 1 through 15 of this Information are incorporated herein as if set forth in full.

17. From in or about June 2006, and continuing until in or about October 2009, in the Northern District of Ohio, Eastern Division, and elsewhere, ROBERT L. ("PETE") McKINNEY, Defendant herein, Edward W. Rodzwick and BLET Official No. 1, did knowingly and voluntarily combine, conspire, confederate, and agree with each other to commit certain offenses against the United States, namely: Bribery in Federally Funded Programs, in violation

-6-

of Title 18, United States Code, Section 666.

PURPOSE AND OBJECT OF THE CONSPIRACY

18. It was a purpose and object of the conspiracy for McKINNEY, while seeking to obtain DLC designation with BLET, to offer and pay cash bribes to Edward W. Rodzwick and BLET Official No. 1 in order to be placed on the DLC list for BLET workers and to have injured BLET workers directed to his firm. These payments were made in an effort to influence and reward Edward W. Rodzwick and BLET Official No. 1 in connection with BLET business.

MANNER AND MEANS OF THE CONSPIRACY

19. The manner and means by which the conspirators sought to accomplish the objects of the conspiracy included, among others, the following:

a. McKINNEY would and did meet with BLET Official No. 1 in a hotel parking lot to deliver large cash payments. In other instances, McKINNEY would have large sums of cash delivered to BLET Official No. 1 at BLET Conventions. Edward W. Rodzwick and BLET Official No. 1 would then split the cash payments.

b. McKINNEY, Edward W. Rodzwick and BLET Official No. 1 would refer to the cash payments as "campaign contributions" in an effort to conceal the true nature of the payments.

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OVERT ACTS

20. The following overt act, among others, was performed in the Northern District of Ohio, Eastern Division, in furtherance of the conspiracy and to effect the objects thereof:

a. In or around mid-2009, BLET Official No. 1 delivered \$15,000 cash, which McKINNEY had given to BLET Official No. 1, to Edward W. Rodzwick at his BLET office in Cleveland, Ohio.

All in violation of Title 18, United States Code, Section 371.

STEVEN M. DETTELBACH  
United States Attorney

BY: Ann C. Rowland  
ANN C. ROWLAND, Unit Chief  
Major Fraud & Corruption Unit

FILED  
2011 FEB 23 PM 1:04  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
AKRON

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	Case No. 1:11CR059
	)	
Plaintiff.	)	
	)	JUDGE GWIN
v.	)	
	)	
ROBERT L. ("PETE") MCKINNEY,	)	<u>PLEA AGREEMENT</u>
	)	
Defendant.	)	

Pursuant to Rule 11(c)(1) (A) and (B) of the Federal Rules of Criminal Procedure, and in consideration of the mutual promises set forth below, the United States Attorney's Office for the Northern District of Ohio (hereinafter "USAO"), by and through its undersigned attorney(s), and the defendant, ROBERT L. ("PETE") MCKINNEY (hereinafter "Defendant"), agree as follows:

Defendant's Initials RJM

Exhibit  
2

Plea Agreement of Robert L. ("Pete") McKinney - page 2 of 19

**MAXIMUM PENALTIES AND OTHER  
CONSEQUENCES OF PLEADING GUILTY**

1. **Waiver of Constitutional Trial Rights.** Defendant understands that Defendant has the right to plead not guilty and go to trial. At trial, Defendant would be presumed innocent, have the right to trial by jury or, with the consent of the United States, to trial by the Court, the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses and subpoena witnesses to testify for the defense, and the right to be protected from compelled self-incrimination. Defendant understands that Defendant has the right to an attorney at every stage of the proceedings and, if necessary, one will be appointed to represent Defendant. Defendant understands that by pleading guilty, Defendant specifically and voluntarily waives each of these trial rights, except the right to counsel. Defendant understands that a guilty plea is a complete admission of guilt and if the Court accepts the guilty plea, the Court will find Defendant guilty without a trial.

2. **Statutory Penalties.** Defendant understands that the statutory maximum penalties, and minimum penalties if applicable, for the count to which Defendant agrees to plead guilty are as follows:

<b><u>Count</u></b>	<b><u>Statute and Description of Offense</u></b>	<b><u>Statutory Sentence Per Count</u></b>
1	18 U.S.C. § 371	Maximum imprisonment: 5 Years Statutory fine: \$250,000 Alternative fine: Twice the gross pecuniary gain or gross pecuniary loss. Minimum period of supervised release: 1 Year Maximum period of supervised release: 3 Years Special assessment: \$100

Defendant's Initials Rhm



Plea Agreement of Robert L. ("Pete") McKinney - page 3 of 19

3. **Special Assessment.** In reference to the penalty listed above, Defendant will be required to pay a mandatory special assessment of \$100 for each count of conviction, for a total of \$100, due immediately upon sentencing.

4. **Costs.** The Court may order Defendant to pay the costs of prosecution and sentence, including but not limited to imprisonment, community confinement, home detention, probation, and supervised release.

5. **Restitution.** The Court may order Defendant to pay restitution as a condition of the sentence, probation, and/or supervised release.

6. **Violation of Probation/Supervised Release.** If Defendant violates any term or condition of probation or supervised release, such violation could result in a period of incarceration or other additional penalty as imposed by the Court. In some circumstances, the combined term of imprisonment under the initial sentence and additional period of incarceration could exceed the maximum statutory term.

**PLEA(S) AND OTHER CHARGE(S)**

7. **Agreement to Plead Guilty.** Defendant agrees to plead guilty to Count 1 of the Information.

8. **Agreement Not to Bring Certain Other Charges.** The USAO will not bring any other criminal charges against Defendant for violations known to the USAO on the date of the execution of this agreement as it relates to this investigation.

Defendant's Initials RLM

Plea Agreement of Robert L. ("Pete") McKinney - page 4 of 19

**ELEMENTS OF THE OFFENSE**

9. The elements of the offense to which Defendant will plead guilty are:

<b>18 U.S.C. § 371: Conspiracy to Commit an Offense</b>	
<b>One:</b>	Two or more persons conspired, or agreed, to commit Bribery in Federally Funded Programs (18 U.S.C. § 666);
<b>Two:</b>	The Defendant knowingly and voluntarily joined the conspiracy; and
<b>Three:</b>	A member of the conspiracy did one of the overt acts described in the information which occurred within the five year statute of limitations for conspiracy for the purpose of advancing or helping the conspiracy.

<b>18 U.S.C. § 666(a)(2): Bribery in Federally Funded Programs</b>	
<b>One:</b>	Edward W. Rodwicz and BLET Official No. 1 were agents of the International Brotherhood of Teamsters;
<b>Two:</b>	The Defendant gave, offered, and agreed to give things of value to Edward W. Rodwicz and BLET Official No. 1;
<b>Three:</b>	The Defendant did so corruptly in connection with some business, transaction or series of transactions of the International Brotherhood of Teamsters;
<b>Four:</b>	This business, transaction or series of transactions involved any thing of value of \$5,000 or more; and
<b>Five:</b>	The International Brotherhood of Teamsters, in a one year period, received benefits of more than \$10,000 under any Federal program involving a grant, contract subsidy, loan, guarantee, insurance or other assistance.

Defendant's Initials RM

Plea Agreement of Robert L. ("Pete") McKinney - page 5 of 19

**SENTENCING STIPULATIONS AND AGREEMENTS**

10. **Sentencing Guidelines.** Defendant understands that sentencing rests within the discretion of the Court; that federal sentencing law requires the Court to impose a sentence which is sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C. § 3553(a), and that the Court must consider among other factors the advisory United States Sentencing Guidelines in effect at the time of sentencing and that in determining the sentence, the Court may depart or vary from the advisory guideline range.

11. **Presentence Report.** Defendant understands that the advisory guideline range will be determined by the Court at the time of sentencing, after a presentence report has been prepared by the U.S. Probation Office and reviewed by the parties. Defendant further understands that it is the obligation of the government to provide to the U.S. Probation Office all known information regarding Defendant's conduct subject to its limited use under U.S.S.G. §1B1.8 and not otherwise protected under the proffer agreement dated July 26, 2010.

12. **Joint Recommendation to Use the Advisory Sentencing Guidelines Computation.** After considering the factors in 18 U.S.C. §3553(a), the parties agree to recommend that the Court impose a sentence within the range and of the kind specified pursuant to the advisory Sentencing Guidelines in accordance with the computations and stipulations set forth below. Neither party will recommend or suggest in any way that a departure or variance is appropriate, either regarding the sentencing range or regarding the kind of sentence other than a departure for substantial assistance as set forth in this agreement.

Defendant's Initials RM

Plea Agreement of Robert L. ("Pete") McKinney - page 6 of 19

13. **Right of Allocution.** Defendant understands and agrees that the USAO reserves the opportunity to speak at Defendant's sentencing. The USAO agrees that Defendant reserves the right of allocution at sentencing.

14. **Stipulated Guideline Computation.** The parties agree that the following calculation, using the current advisory Sentencing Guidelines Manual, represents the correct computation of the applicable offense level.

Base Offense Level	12	§2C1.1(a)(2)
Value of Benefit Received Greater Than \$70,000	8	§§2C1.1(b)(2) and 2B1.1(b)(1)(E)
Subtotal Before Acceptance of Responsibility	20	

The parties agree that no other Guideline adjustments apply.

15. **Acceptance of Responsibility.** The USAO has no reason to believe at this time that Defendant has not clearly and affirmatively accepted personal responsibility for Defendant's criminal conduct. The USAO agrees to recommend a three (3) level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a) and (b), provided Defendant's conduct continues to reflect Defendant's acceptance of responsibility. Defendant understands it will be up to the Court at the time of sentencing to determine whether a reduction for acceptance of responsibility is appropriate.

16. **Criminal History Category.** The parties have no agreement about the Criminal History Category applicable in this case. Defendant understands that the Criminal History Category will be determined by the Court after the completion of a Pre-Sentence Investigation by the U.S. Probation Office.

Defendant's Initials RM

Plea Agreement of Robert L. ("Pete") McKinney - page 7 of 19

17. **Fine.** The parties agree to recommend that Defendant pay a fine of \$188,187.72 as part of the sentence. Defendant understands that the fine is not deductible for federal income tax purposes.

**COOPERATION**

18. Defendant agrees to cooperate fully with the United States of America and any state or local authorities in investigations and prosecutions, as requested by the USAO. Such cooperation shall include providing complete and truthful information, attending all interviews and debriefings, testifying truthfully before the grand jury and all court proceedings if necessary, providing all documents and records which may be requested and providing other forms of cooperation as requested by government agents and prosecutors. Defendant's agreement to cooperate includes the obligation not to commit any additional crimes.

19. If the USAO determines that Defendant has fully cooperated and has rendered substantial assistance in the investigation or prosecution of other persons, the USAO, in consideration for such substantial assistance, will move the Court for a substantial assistance reduction pursuant to U.S.S.G. Section 5K1.1. More specifically, the USAO will move for a downward departure of up to two (2) levels. If the USAO moves for a substantial assistance reduction and the Court agrees that such a reduction is warranted, Defendant's adjusted offense level could be reduced by up to a total of five (5) levels (assuming the Court gives Defendant two (2) levels for substantial assistance and three (3) levels for acceptance of responsibility). Defendant agrees that if the USAO makes a motion for a substantial assistance reduction, Defendant will not ask the Court to grant a reduction of greater than the same two (2) levels. Defendant understands that the final decision about whether to grant a motion for a substantial

*Defendant's Initials* RLM

Plea Agreement of Robert L. ("Pete") McKinney - page 8 of 19

assistance reduction, and the extent of any such reduction, rests entirely with the Court.

Defendant also understands that Defendant will not be entitled to withdraw Defendant's guilty plea if the Court determines that a reduction for substantial assistance is not warranted or refuses to depart the number of levels recommended by the parties. Defendant further understands that the decision to make a motion for a substantial assistance reduction under this agreement rests solely and exclusively within the discretion and judgment of the United States Attorney for the Northern District of Ohio.

20. In consideration of the foregoing promises, it is agreed that any statement made or testimony given in accordance with this plea agreement shall not be used against Defendant in any proceeding save for possible perjury, false statement, or obstruction of justice charges. Defendant understands, however, that in the event Defendant fails or refuses to cooperate or testify as required by this agreement, the USAO may bring such failure to the attention of the Court at the time of sentencing.

21. Defendant understands that if Defendant does not fully cooperate as contemplated by this agreement, if Defendant acts in a fashion inconsistent with acceptance of responsibility for Defendant's criminal conduct, or if Defendant engages in other criminal activity or obstructs or attempts to obstruct justice during the period of Defendant's cooperation, the USAO will not be required to make a motion for a substantial assistance reduction on Defendant's behalf. Defendant also understands that Defendant must at all times provide complete, accurate and truthful information and testimony if requested, and that in the event Defendant, during any criminal proceedings, commits perjury, suborns perjury, or obstructs justice, nothing in this agreement precludes the United States of America or any other law enforcement authority from

*Defendant's Initials* RM

Plea Agreement of Robert L. ("Pete") McKinney - page 9 of 19

prosecuting Defendant fully for those crimes or for any other crimes Defendant has committed and from using Defendant's sworn or unsworn statements against Defendant.

22. Defendant and the USAO agree to recommend to the Court that the imposition of Defendant's sentence may be deferred until such time as Defendant has completed any and all cooperation contemplated by this agreement, to include providing testimony at trial if necessary. Defendant understands that if Defendant is sentenced prior to the completion of all cooperation required by this agreement, Defendant will remain obligated to cooperate fully with the USAO. Defendant understands that if Defendant fails or refuses to cooperate fully with the USAO after Defendant is sentenced, the USAO may pursue charges against Defendant that were dismissed or not filed as a result of this agreement and may pursue any other remedy allowed under this agreement.

**WAIVER OF APPEAL AND POST-CONVICTION ATTACK**

23. **Waiver of Appellate Rights.** Defendant acknowledges having been advised by counsel of Defendant's rights, in limited circumstances, to appeal the conviction or sentence in this case, including the appeal right conferred by 18 U.S.C. § 3742, and to challenge the conviction or sentence collaterally through a post-conviction proceeding, including a proceeding under 28 U.S.C. § 2255. Defendant expressly and voluntarily waives those rights, except as specifically reserved below. Defendant reserves the right to appeal: (a) any punishment in excess of the statutory maximum; (b) any sentence to the extent it exceeds the maximum of the sentencing range determined under the advisory Sentencing Guidelines in accordance with the sentencing stipulations and computations in this agreement, using the Criminal History Category

Defendant's Initials RW

Plea Agreement of Robert L. ("Pete") McKinney - page 10 of 19

found applicable by the Court. Nothing in this paragraph shall act as a bar to Defendant perfecting any legal remedies Defendant may otherwise have on appeal or collateral attack with respect to claims of ineffective assistance of counsel or prosecutorial misconduct.

24. **Waiver of Statute of Limitations.** Defendant waives all defenses based on the statute of limitations with respect to any prosecution that is not already time-barred by the applicable statute of limitation on the date of Defendant's signing of this agreement and that is commenced within *one year* after any of the following events: (1) Defendant fails to plead guilty at the plea proceeding or the Court refuses to accept a guilty plea by Defendant pursuant to this agreement; (2) the Court permits Defendant to withdraw a guilty plea entered pursuant to this agreement or otherwise vacates such a guilty plea; or (3) the conviction obtained pursuant to this agreement is vacated, overturned, or otherwise set aside. Defendant understands the waiver of the statute of limitations is effective immediately upon Defendant's signing of this agreement and is not conditioned upon the approval of this agreement by the Court.

**FACTUAL BASIS AND RELEVANT CONDUCT**

25. Defendant agrees that the following summary fairly and accurately sets forth Defendant's offense conduct and a factual basis for the guilty plea. Defendant further agrees that the facts set forth in the summary are true and could be established beyond a reasonable doubt if the case were to proceed to trial:

Defendant's Initials *RM*



Plea Agreement of Robert L. ("Pete") McKinney - page 11 of 19

A. The Brotherhood of Locomotive Engineers and Trainmen ("BLET") was a national labor organization with over 55,000 members, consisting of railroad employees throughout the United States, headquartered in Cleveland, Ohio. According to its mission statement, the BLET "exists to promote and protect the rights, interests, and safety of its members through solidarity, aggressive representation, and education." The BLET was a division of the Rail Conference of the International Brotherhood of Teamsters ("IBT"). The IBT and the BLET merged on or about January 1, 2004, with the BLET becoming a division of the IBT. During the one-year periods of calendar years 2006, 2007, 2008, and 2009, the IBT received benefits in excess of \$10,000 under federal programs involving grants, contracts, subsidies, loans, guarantees, insurance, and other forms of federal assistance.

B. Edward W. Rodzwick was the National President of the BLET. He assumed the duties of National President on or about March 20, 2008. He also held the title of President of the Teamsters Rail Conference. Prior to that time, Rodzwick served as First Vice President of BLET. Rodzwick resided in Avon, Ohio.

C. BLET Official No. 1 was a Special Representative at the BLET from 1999 through July 30, 2006, and from May 1, 2008 to present. As Special Representative, BLET Official No. 1 was assigned to recruit non-union railroad workers for membership in BLET. BLET Official No. 1 reported directly to Rodzwick.

D. In executing their duties as President and Special Representative of the BLET, which is a division of the IBT, Rodzwick and BLET Official No. 1 were "agent"(s) of the IBT, within the meaning of 18 U.S.C. § 666(a)(1) and (d)(1).

*Defendant's Initials* rw


Plea Agreement of Robert L. ("Pete") McKinney - page 12 of 19

Duties of Fidelity

E. The IBT and the BLET qualified as a "labor organizations" under Section 402(i), Title 29, United States Code, which is part of the Labor Management Reporting and Disclosure Act ("LMRDA"), and they are subject to the various provisions of the LMRDA governing "labor organizations."

F. Pursuant to part of the LMRDA, Title 29, United States Code, Section 501(a), "[t]he officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group." As officers, agents, and representatives of the IBT and its division, the BLET, Edward W. Rodzwick and BLET Official No. 1 were subject to Section 501(a) of the LMRDA. In this capacity, Edward W. Rodzwick and BLET Official No. 1 occupied positions of trust in relation to the IBT, the BLET, and their railway members as a group. They were subject to duties of fidelity pursuant to Section 501(a), including (1) the duty to refrain from dealing with the IBT and the BLET as an adverse party or on behalf of an adverse party in any matter connected with their duties; (2) the duty to refrain from holding or acquiring any pecuniary or personal interest which conflicts with the interests of the IBT and the BLET; and (3) the duty to account to the IBT and the BLET for any profit received by them in whatever capacity in connection with transactions conducted by Edward W. Rodzwick and BLET Official No. 1 or under their direction on behalf of the IBT and the BLET.

G. In their capacity as officers, agents, and representatives of the IBT and BLET, Edward W. Rodzwick and BLET Official No. 1 were also subject to duties of fidelity set forth in official labor organization documents. Among other things, the Code of Compliance for Officers

*Defendant's Initials* 

Plea Agreement of Robert L. ("Pete") McKinney - page 13 of 19

and Employees of the Brotherhood of Locomotive Engineers and Trainmen Concerning Employers and Designated Legal Counsel ("DLC") provided that "[a]n officer or employee [of the BLET] may not solicit or accept gifts, payments, monies, loans, promises or agreements . . . or anything of value including reimbursed expenses given because of his or her position in the organization, from any employer or DLC . . . [w]ho has interests that may be substantially affected by the performance of an officer's or employee's official duties." The IBT Code of Conduct, which governed the performance of official duties by Edward W. Rodzwick and BLET Official No. 1 duties, stated: "International Union policy prohibits officers, employees and representatives from accepting any gift or thing of value from any employer, employer representative, service provider, vendor or potential vendor in violation of applicable law or in circumstances that would create a conflict of interest or the appearance of undue influence."

The DLC Program of the BLET

H. In 1908, Congress enacted the Federal Employers Liability Act ("FELA") (45 U.S.C. § 51-60). FELA granted jurisdiction for claims of recovery for railroad injuries to the federal courts, provided for recovery of damages by railroad employees and their survivors against common carriers, and abolished restrictions on the types and amounts of damages that may be recovered by employees covered by FELA.

I. The BLET's members who are employed by common carriers by railroad are covered by FELA. Attorneys handling FELA matters are generally more effective if they have both experience with federal law relating to FELA, and familiarity with the railroad business. In order to facilitate the retention of qualified and experienced FELA attorneys by its injured members, the BLET maintains a list of designated attorneys who are held out to its members as

*Defendant's Initials* RM

Plea Agreement of Robert L. ("Pete") McKinney - page 14 of 19

competent and professional FELA attorneys. The members of this list are referred to as DLC attorneys.

J. Designation on the DLC list provided a FELA attorney with valuable access to BLET members as potential clients, and to local BLET officials as sources of information and referrals concerning accidents and workers. The BLET affirmatively recommended the DLC attorneys to its members for FELA-related and other business. Though there is no prohibition on representation of union members by non-designated attorneys, designation through the DLC program was typically highly lucrative for a designated attorney.

K. The BLET published Rules of Conduct for DLC attorneys. The BLET represented to its members that the DLC attorneys were bound to follow these Rules of Conduct.

L. The National President of the BLET had authority over the designation status of DLC attorneys. Rodzwick was National President of the BLET and had authority over the designation status of DLC attorneys.

M. In exercising his authority over DLC designations for the BLET's DLC program, Rodzwick was an agent of the IBT and its division, the BLET, conducting business and transactions of those organizations.

N. In exercising authority over DLC designations for the BLET's DLC program, Rodzwick was subject to duties of fidelity to the BLET and to IBT, as further specified above.

O. Defendant ROBERT L. ("PETE") MCKINNEY was a plaintiff's personal injury attorney, specializing in representing injured railroad workers. MCKINNEY practiced at the law firm of McKinney & McKinney, LLP, located in Houston, Texas.

Defendant's Initials MM

Plea Agreement of Robert L. ("Pete") McKinney - page 15 of 19

P. From in or about June 2006, and continuing until in or about October 2009, in the Northern District of Ohio, Eastern Division, and elsewhere, Defendant, Edward W. Rodzwick and BLET Official No. 1, did knowingly and willfully combine, conspire, confederate, and agree with each other to commit certain offenses against the United States, namely: Bribery in Federally Funded Programs, in violation of Title 18, United States Code, Section 666.

Q. It was a purpose and object of the conspiracy for Defendant, while seeking to obtain DLC designation with BLET, to offer and pay cash bribes to Edward W. Rodzwick and BLET Official No. 1 in order to be placed on the DLC list for BLET workers and to have injured BLET workers directed to his firm. These payments were made in an effort to influence and reward Edward W. Rodzwick and BLET Official No. 1 in connection with BLET business.

R. The manner and means by which the conspirators sought to accomplish the objects of the conspiracy included, among others, the following:

1. Defendant would and did meet with BLET Official No. 1 in a hotel parking lot to deliver large cash payments. In other instances, Defendant would have large sums of cash delivered to BLET Official No. 1 at BLET Conventions. Edward W. Rodzwick and BLET Official No. 1 would then split the cash payments.

2. Defendant, Edward W. Rodzwick and BLET Official No. 1 would refer to the cash payments as "campaign contributions" in an effort to conceal the true nature of the payments.

Defendant's Initials RW

Plea Agreement of Robert L. ("Pete") McKinney - page 16 of 19

S. Among other things, in furtherance of the conspiracy and to effect the objects thereof, in or around mid-2009, BLET Official No. 1 delivered \$15,000 cash, which Defendant had given to BLET Official No. 1, to Edward W. Rodzwick at his BLET office in Cleveland, Ohio.

T. As a result of this bribery conspiracy, Defendant received approximately \$94,093.86 in legal fees.

26. Defendant acknowledges that the above summary of Defendant's conduct does not set forth each and every fact that the USAO could prove at trial, nor does it encompass all of the acts which Defendant committed in furtherance of the offense(s) to which Defendant is pleading guilty.

#### **RESTITUTION**

27. **Restitution.** Defendant agrees to make full restitution as ordered by the Court pursuant to Title 18, United States Code, Section 3663, on a joint and several basis, payable immediately on such terms and conditions as the Court may impose, for the losses caused by Defendant's relevant conduct in this case, as defined under Guideline § 1B1.3. Defendant agrees not to seek the discharge of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding.

#### **OTHER PROVISIONS**

28. **Financial Statement.** Defendant agrees to submit to the USAO, prior to the date of sentencing, a complete and accurate financial statement on government form OBD-500.

29. **Agreement Silent About Matters Not Expressly Addressed.** This agreement is silent about all aspects of the determination of sentence not expressly addressed herein, and the

Defendant's Initials RM

Plea Agreement of Robert L. ("Pete") McKinney - page 17 of 19

parties are free to advise the Court of facts and to make recommendations to the Court with respect to all aspects of sentencing not agreed to herein.

30. **Sentencing Recommendations Not Binding on the Court.** Defendant understands that the recommendations of the parties will not be binding upon the Court, that the Court alone will decide the advisory guideline range under the Sentencing Guidelines, whether there is any basis to depart from that range or impose a sentence outside the advisory guideline range, and what sentence to impose. Defendant further understands that once the Court has accepted Defendant's guilty plea, Defendant will not have the right to withdraw such a plea if the Court does not accept any sentencing recommendations made on Defendant's behalf or if Defendant is otherwise dissatisfied with the sentence.

31. **Consequences of Breaching the Plea Agreement.** Defendant understands that if Defendant breaches any promise in this agreement or if Defendant's guilty plea is rejected by the Court or is vacated or set aside, the USAO will be released from all of its obligations under this agreement and may institute or maintain any charges and make any recommendations with respect to sentencing that otherwise would be prohibited under the terms of the agreement. Defendant understands, however, that a breach of the agreement by Defendant will not entitle Defendant to withdraw, vacate, or set aside Defendant's guilty plea or conviction.

32. **Agreement not Binding on other Jurisdictions and Agencies.** Defendant understands that this plea agreement is binding only on the United States Attorney's Office for the Northern District of Ohio. It does not bind any other United States Attorney, any other federal agency, or any state or local government.

Defendant's Initials RM

Plea Agreement of Robert L. ("Pete") McKinney - page 18 of 19

33. **Defendant is Satisfied with Assistance of Counsel.** Defendant makes the following truthful statements: I have discussed this case and this plea agreement in detail with my attorneys who have advised me of my Constitutional and other trial and appeal rights, the nature of the charges, the elements of the offenses the United States would have to prove at trial, the evidence the United States would present at such trial, possible defenses, the advisory Sentencing Guidelines and other aspects of sentencing, and other potential consequences of pleading guilty in this case. I have had sufficient time and opportunity to discuss all aspects of the case in detail with my attorneys and have told my attorneys everything I know about the charges, any defenses I may have to the charges, and all personal and financial circumstances in possible mitigation of sentence. I am satisfied with the legal services and advice provided to me by my attorneys.

34. **Agreement Is Complete and Voluntarily Entered.** Defendant and Defendant's undersigned attorneys state that this agreement is the entire agreement between Defendant and the USAO and that no other promises or inducements have been made, directly or indirectly, by any agent or representative of the United States government concerning any plea to be entered in this case. In particular, no promises or agreements have been made with respect to any actual or prospective civil or administrative proceedings or actions involving Defendant, except as expressly stated herein. In addition, Defendant states that no person has threatened or coerced Defendant to do or to refrain from doing anything in connection with this case, including Defendant's decision to enter a guilty plea. Finally, Defendant acknowledges that this agreement cannot be modified unless in writing and subject to approval by the Court.

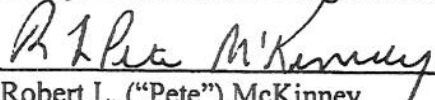
Defendant's Initials RM



Plea Agreement of Robert L. ("Pete") McKinney - page 19 of 19

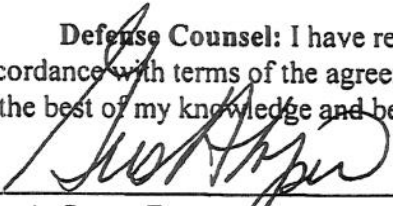
**SIGNATURES**

**Defendant:** I have read this entire plea agreement and have discussed it with my attorneys. I have initialed each page of the agreement to signify that I understand and approve the provisions on that page. I am entering this agreement voluntarily and of my own free will. No threats have been made to me, nor am I under the influence of anything that could impair my ability to understand this agreement.

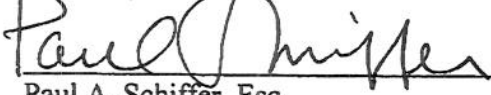
  
Robert L. ("Pete") McKinney

10-27-10  
Date

**Defense Counsel:** I have read this plea agreement and concur in Defendant pleading in accordance with terms of the agreement. I have explained this plea agreement to Defendant, and to the best of my knowledge and belief, Defendant understands the agreement.

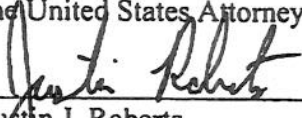
  
Gus A. Saper, Esq.  
Mallet & Saper, L.L.P.  
JP Morgan Chase Tower  
600 Travis Street, Suite 1900  
Houston, TX 77002

11-2-10  
Date

  
Paul A. Schiffer, Esq.  
2211 Norfolk, Suite 610  
Houston, TX 77098

11-2-10  
Date

**United States Attorney's Office:** I accept and agree to this plea agreement on behalf of the United States Attorney for the Northern District of Ohio.

  
Justin J. Roberts  
Assistant U. S. Attorney  
United States Court House  
801 West Superior Avenue, Suite 400  
Cleveland, Ohio 44113-1852

2/7/11  
Date


APPROVED:



Honorable James S. Smith  
UNITED STATES DISTRICT COURT

I hereby certify that this instrument, document no. 9, filed on 02/23/11, is a true and correct copy of the electronically filed original.

Attest: Geri M. Smith, Clerk  
U.S. District Court  
Northern District of Ohio

By:   
Deputy Clerk

2/23/2010  
Date

Defendant's Initials RM

**UNITED STATES DISTRICT COURT**  
 NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA	)	<b>JUDGMENT IN A CRIMINAL CASE</b>
v.	)	
ROBERT L. MCKINNEY	)	Case Number: 1:11CR00059-001
	)	USM Number: None Assigned
	)	<u>Gus A. Saper</u>
	)	Defendant's Attorney

**THE DEFENDANT:**

- pleaded guilty to count(s) 1 of the Information.
- pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.
- was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §§371 & 666	Conspiracy to Commit Bribery in Federally Funded Program	10/2009	1

See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) \_\_\_\_\_
- Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/12/2011  
 Date of Imposition of Judgment

I hereby certify that this instrument, document no. 15, filed on 05/13/11, is a true and correct copy of the electronically filed original.

Attest: Geri M. Smith, Clerk  
 U.S. District Court  
 Northern District of Ohio  
 By: [Signature]  
 Deputy Clerk

s/ James S. Gwin  
 Signature of Judge  
JAMES S. GWIN, UNITED STATES DISTRICT JUDGE  
 Name of Judge Title of Judge

5/13/2011  
 Date

**Exhibit**  
3

DEFENDANT: ROBERT L. MCKINNEY  
CASE NUMBER: 1:11CR00059-001

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:  
4 months on Count 1 of the Information with credit for time served.

The court makes the following recommendations to the Bureau of Prisons:  
FCI Bastrop or FDC Houston (both in Texas)

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal ~~for the district~~ in Houston Texas

at 12:00  a.m.  p.m. on 6/30/2011 or as otherwise

as notified by the United States Marshal. directed by the Bureau of Prisons prior to 6/30/2011.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT L. MCKINNEY  
CASE NUMBER: 1:11CR00059-001

Judgment Page: 3 of 7

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
3 years on Count 1 of the Information.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall comply with the Northern District of Ohio Offender Employment Policy which may include participation in training, education, counseling and/or daily job search as directed by the pretrial services and probation officer. If not in compliance with the condition of supervision requiring full-time employment at a lawful occupation, the defendant may be directed to perform up to 20 hours of community service per week until employed, as approved or directed by the pretrial services and probation officer.
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ROBERT L. MCKINNEY  
CASE NUMBER: 1:11CR00059-001

Judgment Page: 4 of 7

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall submit his/her person, residence, place of business, computer, or vehicle to a warrantless search, conducted and controlled by the U.S. Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

The defendant shall, if recommended by the supervising officer, participate in an approved program of outpatient, inpatient or detoxification substance abuse treatment, which will include drug and alcohol testing to determine if the defendant has reverted to substance abuse.

The defendant shall participate in an outpatient mental health treatment program as directed by the probation officer.

The defendant shall pay the imposed fine of \$250,000.00 immediately. If not paid in full immediately, the defendant shall pay 25% of his gross income per month through the Federal Bureau of Prisons Inmate Financial Responsibility Program towards the fine. If a fine balance remains upon release from incarceration, payment is to commence no later than 60 days following release from incarceration to a term of supervised release and shall be made in equal monthly payments, or at least a minimum of 10% of defendant's gross monthly income, during the term of supervised release and thereafter as prescribed by law.

DEFENDANT: ROBERT L. MCKINNEY  
 CASE NUMBER: 1:11CR00059-001

Judgment Page: 5 of 7

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$ 250,000.00	\$ 0.00

- The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgement in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

**TOTALS** \$0.00                      \$0.00

- See page 5A for additional criminal monetary conditions.
- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the  fine  restitution.
  - the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROBERT L. MCKINNEY  
CASE NUMBER: 1:11CR00059-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:
  - A special assessment of \$ 100.00 is due in full immediately as to count(s) 1 of the Information \_\_\_\_\_  
PAYMENT IS TO BE MADE PAYABLE AND SENT TO THE CLERK, U.S. DISTRICT COURT.
  - After the defendant is released from imprisonment, and within 30 days of the commencement of the term of supervised release, the probation officer shall recommend a revised payment schedule to the Court to satisfy any unpaid balance of the restitution. The Court will enter an order establishing a schedule of payments.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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AFFIDAVIT

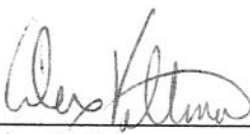
THE STATE OF TEXAS    §  
  §  
COUNTY OF TRAVIS    §

BEFORE ME, the undersigned authority, on this day personally appeared Alex Veltman, Petitioner's attorney of record, who, being by me duly sworn, deposed as follows:

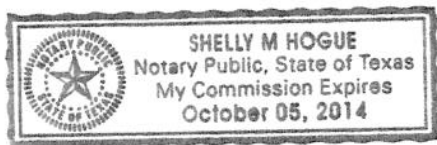
"My name is Alex Veltman. I am over the age of 18 years, of sound mind, capable of making this affidavit, and state the following:

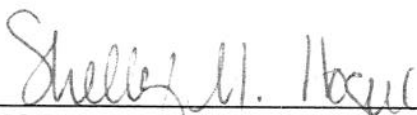
Based upon information and belief, R. Leonadis McKinney, whose Texas Bar Card Number is 13723400, is licensed as an attorney and counselor at law in the State of Texas. Based upon information and belief, R. Leonadis McKinney named as Respondent in the Petition for Compulsory Discipline filed with the Board of Disciplinary Appeals, is one and the same person as the Robert L. McKinney who is the subject of the Judgment in a Criminal Case entered in Case No. 1:11CR00059-001, styled *United States of America v. Robert L. McKinney*, in the United States District Court for the Northern District of Ohio, Eastern Division, wherein McKinney pled guilty to Count 1 of the Information – Conspiracy to Commit Bribery in Federally Funded Programs and was committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of four (4) months and ordered upon release from imprisonment to be on supervised release for three (3) years, ordered to pay an assessment of \$100.00 and a fine of \$250,000.00."

FURTHER Affiant saith not.

  
\_\_\_\_\_  
Alex Veltman

SWORN AND SUBSCRIBED before me on the 28 day of July 2011.



  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS